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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,833	06/27/2003	Jane Frejlev	NOKM.068PA	8454

7590 10/19/2004

Crawford Maunu PLLC
Suite 390
1270 Northland Drive
St. Paul, MN 55120

EXAMINER

GORT, ELAINE L

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,833

Applicant(s)

FREJLEV ET AL.

Examiner

Elaine Gort

Art Unit

3627

NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/8/04. The Applicant has argued that the invention must be entirely practiced by hand to be restrictable. Examiner contends that the MPEP does not state that the entire process be practiced by hand, but merely that it can be carried out by hand. See prior office action for reasons why the restriction is proper.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 10, 15 and 19-25 are rejected because they lack patentable utility. Claims 10, 15 and 19-25 only claim the manipulation of data but perform no concrete, useful or tangible result. The claims merely claim a device or program capable of performing a result but do not positively recite the performance of generating a result.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3627

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 10-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10 is unclear in line 1 what is meant by "communication device user". For purposes of this action it is assumed the term "user" is omitted.

Claim 14 recites the limitation "the information" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In claim 15 is unclear in line 1 what is meant by "a mobile station user". For purposes of this action it is assumed the term "user" is omitted.

Claim 17 recites the limitation "said comparison" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In claim 19 is unclear in line 1 what is meant by "communication device user". For purposes of this action it is assumed the term "user" is omitted.

In claim 19 is unclear in line 4 if "the product" is referring to a computer program product or the product which has a product code.

Claim 21 recites the limitation "said comparison" in line 3. There is insufficient antecedent basis for this limitation in the claim.

In claim 23 is unclear in line 1 what is meant by "communication device user". For purposes of this action it is assumed the term "user" is omitted.

Claim 23 recites the limitation "said user code" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 25 contains the trademark/trade name Bluetooth. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a communication device and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jelen et al. (US Patent 6,129,276) in view of Ruppert et al. (US Patent 5,640,002) and Examiner's Official Notice.

Jelen et al. discloses the claimed system/wireless device/program for collecting data on a wireless communication device into a customer register but is silent regarding the use of wireless means to obtain a product code and where the communication

Art Unit: 3627

device has an identity code. Ruppert et al. discloses that it is known in the art to provide a check out device with wireless means to obtain a product code from an item in order to use radio frequency identification (RFID) tags on items as an alternative to UPC codes. Examiner takes official notice that it is old and well known in the art of communication devices to use communication device identification codes in order to identify the communication device from other communication devices. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system/wireless device/program of Jelen et al. with the wireless means to obtain a product code as taught by Ruppert et al., and to use communication device identification codes as taught by Examiner's Official notice in order to use radio frequency tags on items and to identify the communication device from other communication devices, respectively.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)872-9326.

Application/Control Number: 10/607,833
Art Unit: 3627

Page 6

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

A handwritten signature in black ink, appearing to read 'EL Gort', with a stylized flourish at the end.

Elaine Gort
Examiner, 3627

October 15, 2004